

**MINUTES**  
**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION**  
**REVIEW COMMITTEE**  
**EIGHTEENTH MEETING: NOVEMBER 18-20, 1999**  
**SALT LAKE CITY, UTAH**

The eighteenth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Martin Sullivan at 8:30 a.m., Thursday, November 18<sup>th</sup>, 1999, at the Hilton Downtown, Salt Lake City, Utah. The following review committee members, National Park Service (NPS) staff, and others were in attendance:

Members of the review committee:

Mr. Martin E. Sullivan, Chair  
Mr. James Bradley  
Mr. Lawrence H. Hart  
Ms. Vera K. Metcalf  
Mr. Armand Minthorn  
Ms. Tessie Naranjo  
Mr. John O'Shea

National Park Service staff present:

Mr. Francis P. McManamon, Departmental Consulting Archaeologist, Washington, DC  
Mr. C. Timothy McKeown, NAGPRA Program Leader, Washington, DC  
Mr. Jason Roberts, NAGPRA Consultant, Washington, DC  
Ms. Carla Mattix, Solicitor's Office, Department of the Interior (DOI), Washington, DC  
Ms. Lesa Hagel, NAGPRA Consultant, Rapid City, SD

The following were in attendance during some or all of the proceedings:

Ms. Mary Adair, Museum of Anthropology, University of Kansas, Lawrence, Kansas  
Ms. Marti Allen, Museum of Peoples and Cultures, Brigham Young University, Provo, Utah  
Ms. Bridget Ambler, Colorado Historical Society/Colorado Commission of Indian Affairs, Denver, Colorado  
Mr. Smiley Arrowchis, Northern Ute Tribe, Fort Duchesne, Utah  
Mr. Shane Baker, Museum of Peoples and Cultures, Brigham Young University, Provo, Utah  
Mr. Steve Banegas, Kumeyaay Cultural Repatriation Committee, Lakeside, California  
Mr. Lee Banicki, US Department of Energy, Washington, DC  
Ms. Jeannie Barbour, Chickasaw Nation, Ada, Oklahoma  
Ms. Liz Bauer, Mesa Verde National Park, Mesa Verde, Colorado  
Mr. Robert Begay, Navajo Nation, Kayenta, Arizona  
Mr. Steven Begay, Navajo Nation, Window Rock, Arizona  
Ms. Sue Ann Bilby, Utah State Parks and Recreation, Utah Field House, Vernal, Utah  
Mr. Bill Billeck, Smithsonian, National Museum of Natural History, Washington, DC  
Mr. Charles Bunch, Bureau of Indian Affairs, Anchorage, Alaska  
Ms. Wendy Bustard, NPS, University of New Mexico, Albuquerque, New Mexico  
Ms. Kathleen Callister, US Army, CSTE-DTC-DP-LP  
Ms. Patricia Capone, Peabody Museum, Harvard University, Cambridge, Massachusetts  
Ms. Betsy Chapoose, Ute Indian Tribe, Fort Duchesne, Utah  
Mr. Harold Charles, Jr., Quinault Nation, Taholah, Washington  
Ms. Yolanda Chavez, Lake County Pomo Tribes of California, Robinson Rancheria, California  
Mr. Ron Chiago, Salt River Pima-Maricopa Indian Committee, Scottsdale, Arizona  
Ms. Erma Collins, Native American Alliance of Ohio, McDermott, Ohio  
Ms. Donna Cossette, Fallon Paiute-Shoshone Tribe, Fallon, Nevada  
Ms. Nancy Coulam, Bureau of Reclamation, Salt Lake City, Utah  
Mr. Forrest A. Cuch, Division of Indian Affairs, Salt Lake City, Utah

Mr. H. Paul Cuero, Campo Band of Kumeyaay Indians, Campo, California  
 Ms. Dael A. Devenport, AHTNA, Inc., Glennallen, Alaska  
 Mr. Josh R. Dillabaugh, Cheyenne River Sioux Tribe, Eagle Butte, South Dakota  
 Ms. Rochanne Downs, Fallon Paiute-Shoshone Tribe, Fallon, Nevada  
 Ms. Susan Dublin, American Museum of Natural History, New York, New York  
 Mr. Jim Dykmon, State Historic Preservation Office, Salt Lake City, Utah  
 Ms. Linda Fabbri, University of California, Berkeley, California  
 Ms. Clare Farrell, Midwest SOARRING, Naperville, Illinois  
 Ms. Gillian Flynn, Smithsonian, National Museum of Natural History, Washington, DC  
 Mr. Shawn Foster, Salt Lake City Tribune, Salt Lake City, Utah  
 Ms. Adeline Fredin, Colville Confederated Tribes, Nespelem, Washington  
 Mr. Paul Friesema, Northwestern University, Evanston, Illinois  
 Mr. Glenn Fulfer, NPS, Mountainair, New Mexico  
 Mr. Dennis M. Funmaker, Ho-Chunk Nation, Black River Falls, Wisconsin  
 Ms. Myra Giesen, Office of Policy, Bureau of Reclamation, Lawrence, Kansas  
 Mr. John Gomez, Jr., Pechanga Band of Luiseno Indians, Temecula, California  
 Ms. Martha Graham, American Museum of Natural History, New York, New York  
 Mr. Dell Greek, US Army Reserve Command, Fort McCoy, Wisconsin  
 Mr. Clay Hamilton, Hopi Tribe, Tewa, Kykotsmovi, Arizona  
 Ms. Dee Haroy, Fremont Indian State Park, Sevier, Utah  
 Ms. Debra Harry, Indigenous Peoples Council on Biocolonialism, Nixon, Nevada  
 Ms. Cleone Hawkinson, Friends of America's Past, Portland, Oregon  
 Ms. Roberta Hayworth, US Army Corps of Engineers, St. Louis, Missouri  
 Mr. Bill Helmer, Timbusha Shoshone Tribe, Lone Pine, California  
 Ms. Susan Hirano, University of California, Berkeley, California  
 Mr. Ronald Eric Hollinger, Peabody Museum, Harvard University, Cambridge, Massachusetts  
 Mr. Ted Howard, Shoshone-Paiute Tribe, Owyhee, Nevada  
 Ms. Andrea A. Hunter, Smithsonian, Northern Arizona University, Flagstaff, Arizona  
 Ms. Priscilla Hunter, Coyote Valley Band of Pomo Indians, Redwood Valley, California  
 Ms. Barbara Isaac, Peabody Museum, Harvard University, Cambridge, Massachusetts  
 Ms. Lou Ann Jacobson, Anasazi Heritage Center, Bureau of Land Management, Dolores, Colorado  
 Ms. Kristen Jensen, US Army, CSTE-DTC-DP-LP  
 Ms. Cheryl Johnston, Ohio Historical Society, Columbus, Ohio  
 Mr. Kevin Jones, State of Utah, Antiquities Section, Salt Lake City, Utah  
 Ms. Kathy Kankainen, Utah Museum of Natural History, Salt Lake City, Utah  
 Mr. Tad Kehl, AHTNA, Inc., Glennallen, Alaska  
 Ms. Roula Khawam, University of Arkansas student, Fayetteville, Arkansas  
 Ms. Karolyn Kinsey, US Army Corps of Engineers, St. Louis, Missouri  
 Mr. Keith Kintigh, Society for American Archaeology, Arizona State University, Tempe, Arizona  
 Ms. Melinda Knapp, Ohio Historical Society, Columbus, Ohio  
 Mr. Terry Knight, Sr., Ute Mountain Ute Tribe, Towaoc, Colorado  
 Mr. Wilton Kooyahoema, Hopi Tribe, Hotevilla, Arizona  
 Ms. Karen Krieger, Utah Division of Parks and Recreation, Salt Lake City, Utah  
 Mr. Leigh J. Kuwanwisiwma, Hopi Tribe, Kykotsmovi, Arizona  
 Mr. Clark Spencer Larsen, American Association of Physical Anthropologists, University of North Carolina, Chapel Hill, North Carolina  
 Mr. Bill Latady, Anasazi State Park Museum, Boulder, Utah  
 Mr. Sebastian "Bronco" LeBeau, Cheyenne River Sioux Tribe, Eagle Butte, South Dakota  
 Mr. Edward Luby, University of California, Berkeley, California  
 Mr. Anthony Otto Lucio, Zuni Pueblo, Zuni, New Mexico  
 Mr. James T. Martin, United South and Eastern Tribes, Nashville, Tennessee  
 Ms. Iris Martinez, Coyote Valley Band of Pomo Indians, Redwood Valley, California

Mr. Benjamin Masiel, Pechanga Cultural Resources, Temecula, California  
 Ms. Carolyn McArthur, Colorado Historical Society, Denver, Colorado  
 Ms. Jean McCoard, Native American Alliance of Ohio, Lucasville, Ohio  
 Mr. Roland McCook, Sr., Northern Ute Tribe, Fort Duchesne, Utah  
 Ms. Glain Mercurrow, Mesa Verde National Park, Mesa Verde, Colorado  
 Mr. Duncan Metcalfe, Utah Museum of Natural History, Salt Lake City, Utah  
 Mr. Terry Mo-gart, Hopi Tribe, Kykotsmovi, Arizona  
 Ms. Pauline Girvin-Montoya, Mendocino County Intertribal Repatriation Project, Ukiah, California  
 Mr. Alvin Moyle, Fallon Paiute-Shoshone Tribe, Fallon, Nevada  
 Mr. Ed Natay, NPS, Santa Fe, New Mexico  
 Ms. Theresa Nichols, NPS, Aztec, New Mexico  
 Ms. Bernice Paipa, Kumeyaay Cultural Repatriation Committee, Santa Ysabel, California  
 Mr. Harlan Pinto, Kumeyaay Cultural Repatriation Committee, Lakeside, California  
 Mr. George Prietto, Sycuan Band of Mission Indians, El Cajon, California  
 Mr. A. Wayne Prokopetz, Dinosaur National Monument, NPS, Dinosaur, Colorado  
 Mr. Ronald Rood, Division of State History, Salt Lake City, Utah  
 Ms. Virginia Salazar, NPS, Santa Fe, New Mexico  
 Mr. Alan Schroedl, P-III Associates, Salt Lake City, Utah  
 Mr. Brett Lee Shelton, Indigenous Peoples Council on Biocolonialism, Oglala Lakota, Longmont, California  
 Ms. Dale Ann Sherman, Yurok Tribe, Eureka, California  
 Ms. Thelma R. Simon, Kickapoo Tribe, Horton, Kansas  
 Mr. Christopher Smith, Salt Lake Tribune, Salt Lake City, Utah  
 Mr. David Lee Smith, Winnebago Tribe of Nebraska, Winnebago, Nebraska  
 Mr. Brian Stockes, National Congress of the American Indian, Washington, DC  
 Ms. Barbara A. Sulteer, NPS, Lakewood, Colorado  
 Mr. Charlie Tapia, Pojoaque Pueblo, Santa Fe, New Mexico  
 Mr. Dalton Taylor, Hopi Tribe, Second Mesa, Arizona  
 Ms. Susan Thomas, Anasazi Heritage Center, Bureau of Land Management, Dolores, Colorado  
 Mr. Marlin Thompson, Yerington Paiute Tribe, Yerington, Nevada  
 Ms. Rebecca Tsosie, School of Law, Arizona State University, Tempe, Arizona  
 Mr. Phil Wendzillo, Ponca Tribe of Nebraska, Niobrara, Nebraska  
 Mr. Larry T. Wiese, Mesa Verde National Park, Mesa Verde, Colorado  
 Ms. Karen Wilde-Rogers, Muskogee (Creek) and Pawnee, Colorado Commission of Indian Affairs, Denver, Colorado  
 Mr. Philip Wilson, Salinas Pueblo Missions, NPS, Mountainair, New Mexico  
 Ms. Carrie Wimmer, Museum of Peoples and Cultures, Brigham Young University, Provo, Utah  
 Ms. Pemina Yellow Bird, Three Affiliated Tribes, Lawrence, Kansas  
 Mr. Jerry C. Zamora, Yankton, Hunkpapa, Ft. Peck, Montana

Mr. Sullivan welcomed the review committee members and members of the audience. The review committee members introduced themselves. Mr. Minthorn gave the opening invocation.

### **Review of the Agenda**

Mr. McManamon welcomed the review committee members and audience members, and thanked the review committee members for their work toward the implementation of NAGPRA. He then gave a brief review of the agenda.

## **Implementation Update**

Mr. McManamon explained that the meetings, which are business meetings for the review committee, are open to the public with scheduled public comment periods. Mr. McManamon stated that review committee members had a summary in their binder of the progress made in NAGPRA implementation. He added that although the review committee members tend to hear the most complicated issues regarding NAGPRA implementation, positive interactions occur between Indian tribes, Federal agencies and museums.

Implementation of NAGPRA within the NPS, Department of the Interior (DOI): Mr. McManamon explained that the DOI decided to review NAGPRA implementation based on discussions at the Silver Spring meeting and at a Congressional hearing regarding NAGPRA implementation and its location within the Archeology and Ethnography Program of the NPS. Different proposals were considered. The Assistant Secretary of the NPS sent a memorandum to the Chief of Staff for the DOI recommending that the NPS is the proper bureau to implement NAGPRA and that the Archaeology and Ethnography Program is the appropriate office to carry out the functions of NAGPRA implementation. In order to address criticisms of potential conflicts of interest, the NPS recommended clarifications regarding information presentation and program organization. In addressing concerns about lack of adequate resources, the proposal provides for some additional one-year positions to begin the process of overcoming backlogs and delays in NAGPRA implementation.

Mr. Minthorn expressed concern about the negative effect of backlogs and delays within NAGPRA implementation on Indian tribes. Mr. McManamon explained that the proposal would actually be a two-step process; first, the creation of one-year, temporary positions using available funding, and second, the creation of permanent, full-time positions through funding increases in the base of the program. In response to a question by Mr. Bradley about the level of commitment for this process, Mr. McManamon explained that the Director and the Assistant Secretary of the NPS signed the memo. Mr. Bradley suggested that the review committee members send a letter of acknowledgment to the NPS when there is a final commitment.

Ms. Naranjo asked for an outline of both the NAGPRA program operational and grants budgets for FY 1999 and FY 2000. Mr. McManamon replied that the information was not available at the meeting, but would be provided to the review committee members following the meeting. Ms. Metcalf asked if the efforts of review committee members to lobby for additional funds following the Silver Spring meeting were successful. Mr. McManamon explained that they were helpful as far as providing information, but did not result in any additional funds for FY 2000.

Mr. Minthorn suggested that the review committee members send a letter to the NPS citing concern about the backlog. Mr. Sullivan asked for an update on the status of Federal Register notice publication and database work. Mr. McManamon stated that although he did not have specific information at the meeting, the backlog has grown slightly as notices are received faster than they can be published. He cited the database as one area that would be targeted with the additional resources requested by the NPS, adding that there has been no change in the status of the database since the last meeting. Mr. McManamon stated that he would provide updated information regarding the backlog of notice publication to the review committee members.

Civil Penalties: Mr. McManamon explained that pursuant to advice from the Solicitor's Office, emphasis has been placed on finalizing civil penalty regulations before continuing any further investigations and/or seriously considering the imposition of civil penalties against any institutions. He stated that no new allegations of failure to comply with the statute were reported since the last meeting.

Excavations and Discoveries: Mr. McManamon explained that the NPS has been providing advice and working with the Corps of Engineers in trying to resolve the situation regarding the Kennewick human remains. Since the Silver Spring review committee meeting, the DOI decided some limited destructive tests were necessary, specifically carbon-14 dating tests. The judge in the case has given the Federal defendants until mid-March to provide an answer to the Bonnicksen plaintiffs' request for study. The judge further requested that the Federal defendants carefully consider the Asatru Folk Assembly request for DNA analysis. Mr. McManamon explained that the Federal

defendants currently have experts on DNA interpretation working to determine the likelihood that DNA study would answer the questions posed by the court.

Mr. Minthorn asked if Mr. McManamon felt cultural affiliation could be determined on human remains over 9,000 years old. Mr. McManamon replied that radiocarbon dating is being done to determine the age of the human remains. Experts are being asked to evaluate cultural affiliation by looking at continuities and discontinuities in the different kinds of available data, including archeological, physical anthropological, linguistic, and traditional histories of Indian tribes in the area, to see if there is a reasonable determination that a connection can be made.

Review Committee Discussion: Mr. Minthorn asked for clarification of the civil penalties section regarding assertions of failure to comply with the statute between the four assertions which are under investigation and the three assertions which are under review. Mr. McKeown explained that cases under review are in the initial stages of evaluation to see if the allegations have merit. Cases that are under investigation have gone through the initial evaluation and appear to present some indication of a failure to comply, but no actual determination has been made. Mr. Minthorn expressed concern about lack of staff, time, and resources to address allegations of failure to comply with the statute.

Mr. Sullivan asked for clarification of the situation regarding the six institutions that were granted a period of forbearance. Mr. McManamon explained that the institutions were granted forbearance periods following a decision that no further inventory completion extensions would be granted. Each of the six institutions has to meet the inventory completion requirements negotiated between the individual institutions and Assistant Secretary Barry's office. Mr. Bradley asked for a list of the institutions under forbearance and a list of institutions for which there has been an assertion of failure to comply, with details of any investigations.

Ms. Naranjo inquired about the status of distribution of the Federal agency compliance report. Mr. McManamon stated that it was close to completion, but was delayed due to the need for clarification from the Bureau of Land Management (BLM). Mr. O'Shea expressed concern that both the Report to Congress and the Federal agency compliance report were not distributed after being finalized by the review committee members at the Silver Spring meeting. Mr. McManamon apologized and cited this delay as another example of the need for additional resources.

### **Dispute Resolution Procedures**

Mr. McManamon explained that the draft dispute resolution procedures incorporated two additions discussed at the Silver Spring meeting. The first addition allows for an appeal process when a decision is made that a dispute is not appropriate to be heard by the review committee members, and the second addition prohibits inappropriate contact between disputing parties and members of the review committee. Subsequent to Mr. O'Shea's suggestion, language was added allowing appeal of each step of the decision process regarding a dispute. The dispute resolution procedures were approved at the meeting for Chairman Sullivan's signature (see Attachment A).

### **Dispute Involving the Hopi Tribe and Chaco Culture National Historical Park**

Introduction: Mr. O'Shea chaired the discussion of the dispute involving the Hopi Tribe and Chaco Culture National Historical Park (NHP). Mr. Bradley recused himself from the discussion due to parallel concerns within his institution, the Robert S. Peabody Museum of Archeology in Andover, Massachusetts. Mr. McManamon explained that he was present in his capacity as designated Federal official for the review committee. Mr. O'Shea explained that the role of the review committee is advisory in nature, offering guidance for dispute resolution.

Presentations on Behalf of Chaco Culture National Historical Park: Mr. Charles Wilson, superintendent of Chaco Culture NHP, summarized Chaco Culture NHP's process of making a cultural affiliation determination for Chaco Canyon human remains and emphasized their nine-year consultation process. The human remains and associated

funerary objects in Chaco Culture NHP's Notice of Inventory Completion were determined on an item-by-item basis to be Chacoan Anasazi. Chaco Culture NHP consulted with all New Mexico Pueblos, the Hopi Tribe, the Navajo Nation, the Southern and Ute Mountain Ute Tribes, the Jicarilla Apache and Isleta Del Sur. The Hopi Tribe, the Navajo Nation and most New Mexico Pueblos claimed cultural affiliation with Chaco Canyon. Evidence considered in making the determination include anthropological, archeological, biological, geographical, historical, linguistic, and kinship evidence. Chaco Culture NHP determined that the Navajo Nation was culturally affiliated with Chaco Canyon human remains under NAGPRA based on a preponderance of the evidence.

Presentations on Behalf of the Hopi Tribe: Mr. Leigh Kuwanwisiwma, director of the Cultural Preservation Office for the Hopi Tribe, summarized the Hopi Tribe's position that Chaco Culture NHP did not comply with the law in the process of making its determination of cultural affiliation. Specifically, Chaco Culture NHP made an assumption that most southwestern Indian tribes and Pueblos were in some manner culturally affiliated with Chaco Canyon, Chaco Canyon human remains and culturally affiliated funerary objects. Chaco Culture NHP considered evidence associating tribal presence and association to a place, but did not make a determination of cultural affiliation on an item-by-item basis. In their May position paper, the Hopi Tribe recommended that specific guidelines for making cultural affiliation determinations are needed. Mr. Kuwanwisiwma expressed concern that the consultation process described by Mr. Wilson was not done with Indian tribes individually and focussed primarily on repatriation and disposition rather than the issue of cultural affiliation. The Hopi Tribe pulled out of the process in January of 1997 because they felt the cultural affiliation issue and determination was not being adequately addressed. The Hopi Tribe would like to have the process of cultural affiliation revisited at Chaco Culture NHP, as well as Mesa Verde National Park and Aztec Ruins National Monument. Mr. Anthony Otto Lucio, council member of Zuni Pueblo, explained that he read the All Indian Pueblo Council (AIPC) resolution in support of the Hopi Tribe's claim at the Silver Spring meeting and was present in Salt Lake City in order to answer questions or offer recommendations on behalf of Zuni Pueblo.

Review Committee Discussion: Mr. Hart expressed appreciation for Chaco Culture NHP's efforts regarding consultation, documentation of evidence, and the process of making their cultural affiliation determination. Ms. Metcalf expressed concern that Chaco Culture NHP included all Indian tribes as culturally affiliated, and she asked about the acceptability of the AIPC for repatriation purposes. Mr. Kuwanwisiwma explained that the AIPC resolution spoke specifically to the situations at Chaco Culture NHP and Aztec Ruins National Monument and any other situations would have to be considered individually. Mr. Minthorn asked about the role of the Forest Service (FS) and expressed concern about FS compliance in general. Mr. Kuwanwisiwma expressed dissatisfaction about the process used by the FS to make cultural affiliation determinations in other situations. Both Mr. Kuwanwisiwma and Mr. Wilson stated that the FS had no significant role in this dispute.

Mr. Sullivan expressed appreciation for the vast amount of work and effort by Chaco Culture NHP but respectfully disagreed with Mr. Hart that the process used by Chaco Culture NHP in their determination of cultural affiliation was completely appropriate. He suggested that weighting of evidence might be necessary in the process of affiliation. Mr. Minthorn asked each side to comment on a statement at the Silver Spring meeting regarding cultural affiliation of a non-Puebloan Indian tribe with Hopi ancestral remains. Mr. Kuwanwisiwma responded that the comment was made by Mr. Wayne Taylor of the Hopi Tribe and reflects the importance of respect for tribal uniqueness. Each cultural affiliation claim needs to meet with a determination of merit and should not be influenced by politics. Mr. Wilson explained that in discussions with the Navajo Nation, the Navajo Nation expressed a serious belief of their cultural affiliation with all Anasazi parks. Mr. Wilson explained that after consideration of the evidence, Chaco Culture NHP included the Navajo Nation as culturally affiliated.

In response to a question by Mr. Sullivan regarding making determinations on a site-by-site basis, Ms. Wendy Bustard explained that approach was deemed to be ineffective when taking into consideration that the sites in Chaco Canyon form a whole archeologically. Indian tribes considered themselves to be culturally affiliated with individual sites but more specifically with Chaco Canyon as a whole. Ms. Bustard added that archeological evidence suggests a cultural continuity from the Archaic period through Pueblo III, with continuous occupation by a number of tribal groups. She explained that DNA evidence suggests significant intermarriage had occurred between Navajo and

Puebloan groups. Mr. Kuwanwisiwma expressed concern that evidence of intermarriage was being used for an assertion of cultural affiliation, especially given the time periods under consideration. Mr. O'Shea pointed out that these differing concerns seem to indicate a need for weighting of evidence in cultural affiliation determinations.

Mr. Minthorn asked each party to define preponderance of the evidence in making cultural affiliation determinations. Mr. Kuwanwisiwma stated that preponderance of the evidence is weighing all categories of evidence in the law collectively and making an assessment on the merits of each line of evidence to make a determination. Mr. Wilson stated that preponderance of the evidence means there is more evidence one way or the other, 51 percent, and added that Chaco Culture NHP did evaluate quality and quantity of evidence in making their determination. Ms. Naranjo pointed out that cultural borrowing is not the same as cultural affiliation, and added concern that consultation was done on a group basis and not with individual Indian tribes. Mr. Hart expressed concern about the five-year time period the Hopi Tribe was not present in the consultation records of Chaco Culture NHP.

Mr. Sullivan recommended Federal agencies and museums consider the relative weight of cultural affiliation, rather than a strict yes or no determination. Mr. Wilson expressed concern about the amount of time and money necessary to redo the cultural affiliation determination. Mr. Kuwanwisiwma recommended that the cultural affiliation reevaluation be done with independent oversight outside of Chaco Culture NHP. Mr. Wilson explained that revisiting the cultural affiliation determination would not address this problem unless the Hopi Tribe and the Navajo Nation resolve this issue together. Mr. Kuwanwisiwma felt that the problem was in the application of the process, which might be helped by a weighing of the evidence, and added that placing the dispute before the Indian tribes would prolong the issue.

After considering the presentations by the involved parties, the evidence presented, and the process used for making a determination of cultural affiliation by Chaco Culture NHP, the review committee members unanimously recommended that Chaco Culture NHP reassess its determination of cultural affiliation while considering specific issues. One, determination of cultural affiliation should be made on a site-by-site basis, assessing each site based on the specific data available. Two, while collective consultation can be useful, it should not be used in lieu of individual tribal consultation in this case. Three, a proper determination of cultural affiliation necessarily requires the critical evaluation and careful weighing of all available evidence, which should emphasize group identity, time period, specific cultural practices and traceable cultural continuity. Four, Chaco Culture NHP should take steps to ensure the objective character of the determinations of cultural affiliation of the human remains and other cultural items in the control of Chaco Culture NHP. The process Chaco Culture NHP follows in making cultural affiliation determinations must be seen by others to have been objective; for example, Chaco Culture NHP might engage a qualified independent contractor to reevaluate the information from the Chaco Culture NHP sites and offer specific recommendations for cultural affiliation. Further, it was the unanimous recommendation of the review committee members that Chaco Culture NHP should withdraw its Notice of Inventory Completion and reassess its determination of cultural affiliation. Mr. Bradley asked that a statement be added explaining that he recused himself from the discussion and finding.

### **Implementation of the Statute in the Great Basin Area**

Ms. Lou Ann Jacobson, Anasazi Heritage Center, explained that the Heritage Center, located in Dolores, Colorado, is a museum, interpretive center, and repository operated by the BLM. The facility has approximately three million archeological objects in its collection, all from the southwest quadrant of Colorado. Ms. Jacobson reported that an inventory was completed in late 1995 and includes 426 individuals and 3,610 associated funerary objects. Three individuals and 3,008 associated funerary objects have been repatriated to date. Individual tribal consultation with 24 area Indian tribes is ongoing concerning the remaining human remains and associated funerary objects. Mr. Minthorn expressed appreciation for the efforts of the Heritage Center and asked about collections in non-Federal repositories. Ms. Jacobson explained that when the Heritage Center was completing their inventory, they assisted non-Federal repositories in identifying BLM collections, which were subsequently brought to the Heritage Center repository and included in their inventory. Mr. Bradley commended the Heritage Center's efforts. In

response to a question about time periods represented in their collection, Ms. Jacobson explained the majority of the collection dates from Pueblo I and II, with one exception of an Archaic burial, currently listed as culturally unidentifiable.

Mr. Alvin Moyle, Paiute-Shoshone Tribe of the Fallon Reservation, updated the review committee members on their request for the return of the Spirit Cave human remains. For three years, the Paiute-Shoshone Tribe has been seeking the repatriation of the human remains known as Spirit Cave Man and three other individuals excavated from Spirit Cave in 1940. In May and June 1999, the Paiute-Shoshone Tribe requested four things from BLM's Nevada state director. One, a request for sufficient time to prepare and submit reports supporting the repatriation request was granted and the decision regarding the Paiute-Shoshone Tribe's repatriation request was delayed until December 1999. Two, a request for temporary protection of the Spirit Cave human remains and their relocation to a US Fish and Wildlife vault was denied on the grounds that the vault did not meet specifications; however, the director stated he would address concerns regarding lack of sensitivity demonstrated by museum employees. Three, a request to provide all documentation to the Paiute-Shoshone Tribe and their experts so they could evaluate and respond to the material was granted. Four, a request to the director to commit to three BLM-Indian tribe consultation meetings prior to the decision was denied on the grounds that predecisional consultations were not prudent; however, the director did indicate that further consultation might occur to address new information uncovered in the Paiute-Shoshone Tribe's research. Mr. Moyle added that area Indian tribes fully support this repatriation request. Mr. Moyle requested a written recommendation of the review committee members to support the repatriation of the Spirit Cave human remains from the BLM to the Paiute-Shoshone Tribe. He submitted written documentation regarding the Spirit Cave human remains, as well as comments on the draft principles of agreement regarding culturally unidentifiable human remains, to the review committee members.

Mr. Minthorn expressed concern for the differing levels of NAGPRA compliance within individual Federal agencies such as the BLM, as evidenced by Mr. Moyle and Ms. Jacobson's comments. He stated that consultation is a responsibility, not a choice. He recommended that Federal agencies be asked to report to the review committee members on their compliance progress, and specifically would like a report from the BLM concerning this issue. Mr. Minthorn expressed his support of the Paiute-Shoshone Tribe and his hope that this issue would not later come before the review committee members as a dispute. Ms. Naranjo expressed concern over the BLM's refusal to conduct what they called predecisional consultations. Mr. O'Shea asked if the state director was going to make the decision regarding the Paiute-Shoshone Tribe's repatriation request. Mr. Moyle stated that he was not sure who would be specifically making the decision. Mr. Bradley expressed concern that the BLM was making a determination without proper tribal consultation, and suggested that the review committee members remind the BLM of statutory requirements regarding consultation.

In response to concerns raised by Mr. Moyle, the review committee members asked the NPS to send a letter to the BLM Nevada state director detailing Mr. Moyle's concerns, the Paiute-Shoshone Tribe's intention to submit documentation to the BLM in December supporting their claim for cultural affiliation with the Spirit Cave human remains, and recommendations by the review committee members that the BLM fully consider this information in reaching a determination of cultural affiliation and continue consultation with the Paiute-Shoshone Tribe and other interested Indian tribes regarding the Spirit Cave human remains. A draft of the letter was prepared and approved at the meeting.

Ms. Karen Wilde-Rogers, Colorado Commission of Indian Affairs (CCIA), explained that the CCIA was created by statute in 1976 to serve the interests of the two Ute nations, as well as to investigate and address the needs of the 39 Indian tribes within Colorado. As the executive secretary, Ms. Wilde-Rogers is the only full-time employee of the commission. The commission is comprised of 15 members: two members are representatives from the two Ute nations, two at-large members are elected annually and are encouraged to be Native American residents of the state, and the remaining members are state agency executive directors. The commission is chaired by the lieutenant governor of the state. Ms. Wilde-Rogers explained that the CCIA and the Colorado Historical Society (CHS) have a unique partnership grant which enables the CCIA to have part-time staff support for NAGPRA-related issues through the position of NAGPRA liaison held by Ms. Bridget Ambler. This partnership with CHS also allows the CCIA to



support tribal visits to Colorado museums and institutions for collection review. The CCIA has had increased dialogue with the CHS and the Office of the State Archeologist, resulting in the formation of a reinterment committee to address the reburial process of 200 culturally unidentifiable human remains held by CHS. The reinterment committee will be developing a process for the culturally unidentifiable human remains, which will be presented to the review committee members at a subsequent meeting. Ms. Wilde-Rogers invited the review committee members to meet in the Denver, Colorado area, and offered the support of CCIA and CHS for logistical planning purposes.

Ms. Carolyn McArthur, CHS, explained that CHS's NAGPRA implementation program is coordinated through the curatorial department of the Historical Society in Denver. This curatorial department is responsible for approximately 150,000 objects, of which 15,000 objects are archeological in nature including 10,000 American Indian cultural objects representing nearly 150 Indian tribes from the Southwest, Plains and Intermountain regions. In 1995, the CHS submitted a census to the NPS of nearly 270 ancient Pueblo people, more than 350 culturally unidentifiable human remains and seven culturally affiliated people, including two who were repatriated. In addition, the Colorado State archeologist holds more than 100 human remains discovered inadvertently in Colorado, either on state or private land. The CHS was fortunate to receive six NAGPRA documentation grants from the NPS, which were used for tribal consultations and a symposium to explore NAGPRA applicability to objects in the collections of the Denver Art Museum and the CHS. CHS currently has two projects in partnership with CCIA, including extended consultations with six Indian tribes and five Colorado museums and a symposium in partnership with 17 Indian tribes scheduled for October 2000. Ms. McArthur explained that the CHS and CCIA are working to explore regional solutions for the possible disposition of culturally unidentifiable human remains held at the CHS. Another important partnership project between the CHS and CCIA is the creation of the position of NAGPRA liaison held by Ms. Bridget Ambler, to help facilitate these projects and to provide assistance to both Indian tribes and museums.

Ms. Bridget Ambler, CHS and CCIA, explained that she was the NAGPRA liaison between the CHS and CCIA, a position that was created to address the needs and concerns of Indian tribes and museums under NAGPRA. The position provides staff support to the CHS and the CCIA for NAGPRA-related activities and provides information upon request to Indian tribes, museums and Federal agencies. Ms. Ambler explained that since holding the position, she has provided assistance or information to over 53 Indian tribes and 22 museums and agencies across the country. In addition to the projects described by Ms. McArthur and Ms. Wilde-Rogers, CHS and CCIA are in the process of rehousing human remains in a collaborative way that is both culturally sensitive and archivally stable. Ms. Ambler stated that both the CHS and CCIA deserve recognition for their commitment in forming this unique grant partnership to achieve common goals. Ms. Ambler expressed hope that this experience would help other states develop similar collaborative NAGPRA programs.

Mr. Terry Knight, Sr., Ute Mountain Ute Tribe, stated he was a spiritual leader designated as the NAGPRA tribal person. He explained that his goal was the repatriation of Native American human remains and funerary objects. He expressed his appreciation for meeting the review committee members, but explained that some people use inaccessibility of the review committee as an excuse not to comply with NAGPRA or to delay the process. He added that sometimes protocol is allowed to take precedence over what has to be done, such as receiving information and recommendations from spiritual people. Mr. Knight explained that he has had some positive experiences with representatives of the FS and the NPS who try to deal with the issues and accomplish the intent of the law within the regulations. He emphasized the need to remember the original intent of the law, which is the reinterment of Native American human remains. Mr. Knight explained that he received copies of the BLM policies wherein tribal spiritual people are not recognized as consultants and therefore are not given funding to travel in order to make recommendations regarding specific sites.

Mr. Minthorn expressed concern about this policy and asked Mr. McManamon what the NPS could do to address Mr. Knight's concern. Mr. McManamon replied that the way NAGPRA is implemented at the local level by individual agency and museum offices allows for the possibility of inconsistent application of consultation practices. In response, the NPS has tried to provide technical assistance, training, publication of successful practices, and

guidance on consultation to address these inconsistencies. Mr. McManamon suggested that if there was a specific concern about a policy of the BLM, perhaps the review committee members could ask the BLM to attend the next review committee meeting and be prepared to address this issue. Mr. Sullivan asked if other Federal agencies have policies prohibiting the hiring of traditional people as consultants. Mr. McManamon stated that he did not know, but the NPS could try to canvas agency representatives on that issue. Mr. Bradley expressed his appreciation to Ms. Wilde-Rogers, Ms. McArthur, Ms. Ambler, and Mr. Knight for their level of cooperation and the impressive model that they presented for NAGPRA implementation.

Mr. Forrest Cuch, Director, Utah Division of Indian Affairs, explained that Utah's state NAGPRA law was enacted in 1992 and is very similar to the Federal NAGPRA, except that it applies to state and private land. The Native American Remains Review Committee is comprised of seven members appointed by the division director, four from nominations submitted by Indian tribes and three from nominations submitted by representatives of repositories. The committee meets as necessary to mitigate issues pertaining to the repatriation of human remains and funerary objects, which is roughly five to six times per year. The state archeologist regularly attends the meetings. Current repatriation issues include human remains removed from Hill Air Force Base and Fremont Park. Another set of human remains discovered in front of the Delta Center in downtown Salt Lake City are currently being studied by the office of the state archeologist and are believed to be the northernmost discovery of Fremont human remains in Utah. Mr. Cuch explained that his main concern regarding these Native American human remains is the length of time taken for the analysis. In response to a question by Mr. Minthorn, Mr. Cuch explained that this discovery was not on Federal land and would not fall under the Federal NAGPRA. Mr. Bradley expressed his appreciation for the level of cooperation described by Mr. Cuch.

Mr. Ted Howard, Shoshone-Paiute Tribes of Idaho and Nevada, explained that the people of the Great Basin consider themselves to be one people with only slight differences in language or lifestyle. Archeological evidence in the Great Basin covers more than 10,000 years, but is inconclusive when attempting to describe the cultural sequences throughout the region. Cultural boundaries have not been conclusively defined in the Great Basin area. Indian Claims Commission records allow only for consideration of exclusive use lands, which represent only a small portion of the lands traditionally associated with cultural groups, and are of little use in cultural affiliation determinations. Mr. Howard stated that the draft guidelines on culturally unidentifiable human remains do not fulfill the requirement of being respectful when calling for the speedy repatriation of human remains for which there is little or no information. While archeologists argue that knowledge and research benefit all people and perceive of Native American ancestors as research specimens, contemporary Native Americans preserve the past in their oral history and ongoing ceremonial practices and beliefs. Mr. Howard stated that the debate between Native Americans and archeologists is one of property, which is unsuitable when addressing the legal rights of Indian people with regard to their ancestors. In seeking the protection of their ancestors, Native Americans are attempting to secure recognition of basic human rights. Mr. Howard expressed concern that Indian tribes were informed, not consulted, about a recent educational dig in central Nevada by the BLM. Mr. Minthorn expressed concern about this lack of compliance by the BLM, as ARPA requires tribal permission before a permit can be issued. Mr. McManamon added that while this is true for activities on tribal land, ARPA requires only notification for activities taking place off of tribal land.

Ms. Nancy Coulam, Upper Colorado Region, Bureau of Reclamation, explained that she was present to give an update on NAGPRA compliance for the Upper Colorado Region, which covers a seven-state area from Texas to the Idaho border, including both the Great Basin and the Colorado Plateau. She explained that the inventory was completed and submitted to the NPS in 1995; however, museums were funded to redo inventory and summary reports as inadvertent discoveries were mistakenly included in the initial submissions. The revised inventory will be resubmitted this year to Indian tribes and the NPS. Consultation was conducted with 30 Indian tribes through multitribal meetings, which resulted in numerous Indian tribes claiming cultural affiliation with portions of the collection. Repatriations have occurred for claims from a single Indian tribe. A series of individual tribal consultations have been initiated as the next step in the consultation process. Ms. Coulam explained that there is not widespread agreement on the definitions of prehistoric groups in Utah, and all Federal agencies and museums in Utah have received identical, multiples claims for cultural affiliation with all groups. This has resulted in a series of

meeting among the agencies to help ensure consistent definitions of these earlier groups and to develop ways to compile and document the different lines of evidence for cultural affiliation determinations. Since consultation has shown that almost all Indian tribes wish to reinter human remains and associated funerary objects as close as possible to their site of origin, efforts have begun to try to designate specific plots of land protected under Utah state law for repatriation purposes. Mr. Minthorn commended the efforts described by Ms. Coulam for this division of the Bureau of Reclamation, but pointed out his concerns about noncompliance with NAGPRA by the agency as a whole.

### **Discussion of Request from the Commonwealth of Virginia**

Mr. Bradley summarized the request from the Commonwealth of Virginia, previously heard by the review committee members at the Silver Spring meeting. The Commonwealth of Virginia submitted a request to rebury human remains from the Hayes Creek Mound site in Rockbridge, Virginia. At the Silver Spring meeting, the review committee members determined that the request was reasonable if additional information was made available. The Commonwealth of Virginia provided the information prior to the Salt Lake City meeting. Mr. O'Shea asked for clarification of the difference between state recognized Indian tribes, such as the eight Indian tribes represented in this case, and Federally recognized Indian tribes. Mr. Sullivan explained that the eight Indian tribes in Virginia are all state recognized and all agree on the outcome of this request. Ms. Naranjo asked if each of the eight Indian tribes were adequately represented on the Virginia Indian Council, which provided documentation supporting the request. Mr. McKeown explained that the Virginia Indian Council is composed of the elected leaders of the eight state recognized Indian tribes. The review committee members agreed unanimously to approve the request and asked the NPS to send a letter detailing their recommendation to the Commonwealth of Virginia. A draft of the letter was prepared and approved at the meeting.

### **Disposition of Culturally Unidentifiable Human Remains**

Mr. McManamon explained that museums and agencies are responsible for determining cultural affiliation of human remains and funerary objects in consultation with potential culturally affiliated Indian tribes. The review committee members can make specific recommendations regarding individual cases where cultural affiliation cannot be determined. The review committee is also charged with making recommendations for a general method for dealing with Native American human remains for which a determination of cultural affiliation cannot be determined. Mr. Bradley, Ms. Naranjo and Mr. Sullivan reviewed the review committee members' previous attempts at drafting recommendations for culturally unidentifiable human remains, including developing and publishing for comment the draft principles of agreement of culturally unidentifiable human remains following the Silver Spring, Maryland meeting. Mr. Bradley asked Mr. McKeown to summarize the written comments received related to the draft principles. Mr. McKeown explained that the 83 comments received prior to the meeting represented four Federal agencies, ten Indian tribes, 13 museums, eight national tribal, scientific or museum organizations, six state agencies, 22 universities or colleges, and 20 individuals or other organizations. Mr. McKeown provided a written summary of the substantive comments of the Federal agencies, national organizations and Indian tribes to the review committee members.

After discussion of the draft principles of agreement regarding culturally unidentifiable human remains, the review committee members had several suggestions and comments. Mr. Sullivan expressed his hope that the review committee members could develop two documents related to culturally unidentifiable human remains; one, draft regulations to enunciate general national policy, and two, technical guidelines based on specific models of dealing with the issue. Ms. Metcalf stated that NAGPRA was human rights legislation that provided for Native Americans determining the destiny of their heritage, culture and authority.

In response to a concern raised by Mr. Minthorn, section A.2 was changed to read, "Specifically, the statute requires" and the portion of section A.3 that read, "and is beyond the review committee's charge" was removed. In response to comments by Ms. Tsosie, as well as the views of several review committee members, a statement will be

developed at a later time and added to the draft principles articulating the legal basis for the statement in section A.4.a, "The process be primarily in the hands of Native people." Mr. O'Shea expressed concern about that statement and stated that nothing in the law or regulations supported the contention that decisions regarding culturally unidentifiable human remains should be solely in the hands of Native Americans. In response to a suggestion by Mr. Minthorn, section A.5 was changed to read, "The statute acknowledges the legitimate need to return control over ancestral remains and funerary objection to Native people, and the legitimate public interest in educational, historic and scientific information conveyed by those remains and objects."

For clarification and consistency, section B.1 was changed to read, "Federal agencies and museums must make a determination as to whether Native American human remains in their control are related to lineal descendants, culturally affiliated with a present-day Federally recognized Indian tribe or Native Hawaiian organization, or are culturally unidentifiable. This determination must be made through a good faith evaluation of all relevant and available documentation, and in consultation with any appropriate Indian tribe or Native Hawaiian organization." In response to Mr. Minthorn and Ms. Metcalf's suggestions, section B.2 was changed to read, "A determination that human remains are culturally unidentifiable may change to one of cultural affiliation as additional information becomes available through ongoing consultation or any other source. There is no statute of limitations on tribes in terms of making a claim."

In section B.3, the explanation was changed and the categories of culturally unidentifiable human remains were reduced from four to three, "An agency or museum determination that human remains are culturally unidentifiable may occur for different reasons. At present, three categories are recognized: a. Those for which cultural affiliation could be determined except that the appropriate tribe is not Federally recognized. b. Those which represent a defined earlier identifiable group, but for which Federal agencies or museums have determined that no present-day Indian tribe exists. c. Those for which evidence is insufficient for a Federal agency or museum to make a determination of cultural affiliation."

In response to comments by Mr. Minthorn, the section on documentation was moved to B.4 and contains the following points, "a. Documentation is required for inventory completion and determination of cultural affiliation by Federal agencies and museums. It is appropriate that documentation be conducted in accordance with standards defined by 43 CFR 10.9. b. Documentation does not mean the authorization of new scientific studies or other means of acquiring or preserving additional scientific information from human remains and associated funerary objects. c. Documentation must occur within the context of the consultation process and should be proportional to the importance of the information. d. Additional study is not prohibited but must occur within the context of the consultation process. e. Documentation prepared for compliance with the statute is a public record."

The guideline section was changed from four specific guidelines to the following principle; "Respect must be the foundation for any disposition of culturally unidentifiable human remains. Human remains determined to be culturally unidentifiable are no less deserving of respect than those for which cultural affiliation has been established." Review committee members felt the guideline requirements of equitable, doable and enforceable were actually concepts inherent in any regulations.

The review committee members expressed the need for further consideration of a number of issues, including: Use and meaning of the words disposition and repatriation; the need for explicit language concerning documentation requirements beyond the idea that documentation does not mean the authorization of new studies and must occur within the consultation process, and the appropriateness of including any discussion regarding documentation requirements in the principles of agreement; and the issue of study of culturally unidentifiable human remains.

At the conclusion of the discussion, Ms. Metcalf, Mr. Hart, Mr. Sullivan and Mr. Bradley stated they were comfortable with the draft principles document with minor modifications, Mr. O'Shea stated that he was not comfortable with the document, and Ms. Naranjo and Mr. Minthorn abstained. The review committee members asked that the NPS send a letter of acknowledgment to everyone who submitted comments on the draft principles of agreement regarding culturally unidentifiable human remains.

## **Review Committee Meeting Protocol**

The review committee members discussed the draft of the review committee meeting protocol prepared at the Silver Spring meeting and changed the first section to require that the next meeting location and dates would be set before the meeting adjourned. Review committee members agreed that although planning two meetings in advance would be helpful, it is not possible with the next two meetings given the current schedules of the review committee members and the upcoming term expirations of Ms. Naranjo and Mr. Sullivan in June 2000. The review committee meeting protocol was approved at the meeting for Chairman Sullivan's signature (see Attachment B).

## **Draft Guidance on Excavation and Discovery Activities**

Mr. McManamon explained the purpose of the draft guidance on excavation and discovery activities is to provide additional information to Federal agencies in an attempt to address inconsistencies in the way Federal agencies apply regulations dealing with inadvertent discoveries and planned excavations, specifically concerning consultation with Indian tribes and processes for handling recoveries. The Assistant Secretary for Fish, Wildlife and Parks will ultimately issue this guidance document to Federal agencies, Indian tribes and other interested parties. The review committee members discussed the document and made the following changes: part of section 3.a was changed to read, "Indian tribes with a cultural relationship," to more accurately reflect statutory language. For clarification purposes, a portion of section 4 was changed to read, "Excavation and removal of the remains and cultural items, if necessary, using archaeological methods and techniques."

Mr. Minthorn stated that although the guidelines were a good framework, the actual creation of inadvertent discovery plans needs to be done with Indian tribes at the local level and needs to include consultation and mitigation, as the current lack of plans causes problems. Mr. Minthorn expressed the opinion that this guidance should be issued in the form of a mandate. Mr. McManamon replied that he was unsure if there was authority to mandate mitigation plans, but he would check with the Solicitor's Office to clarify the issue. Mr. O'Shea suggested that Federal agencies could provide samples of local mitigation agreements when giving updates of Federal agency compliance to the review committee members. Mr. McManamon stated that although the review committee members do not need to approve this guidance, he would keep the review committee members informed of the progress of the draft as well as provide updated drafts of the guidance to the review committee members for comment.

## **Solicitation for Nominations for Two Review Committee Members**

Both Ms. Naranjo and Mr. Sullivan's terms as members of the review committee will expire in June 2000. The review committee members urged the NPS to expeditiously publish notice in the Federal Register soliciting nominations and begin consultations with appropriate groups for the submission of nominations for two new members. A draft Federal Register notice soliciting nominations for two new members of the review committee was prepared at the meeting.

## **Upcoming Meetings**

After discussion, the review committee members tentatively set the next meeting for April 2000 in Nashville, Tennessee, to be coordinated in cooperation with the United South and Eastern Tribes (USET), per invitation by Mr. James T. Martin, Executive Director, USET.

## **Review of Minutes of Silver Spring, Maryland**

The review committee members unanimously approved the minutes of the Silver Spring, Maryland meeting on May 3, 4 and 5, 1999.

### **Action Items**

The review committee members were in favor of establishing an action list detailing specific actions necessary to respond to issues brought before the review committee. Such a list would be beneficial in keeping track of the progress of any requests made by the review committee members. Specific requests made at this meeting included completing the following: finding regarding the Hopi Tribe and Chaco Canyon NHP; letter to the Field Museum regarding the Ho-Chunk war bundle claim; letter to the Nevada State BLM director regarding the Spirit Cave human remains issue; letter to the Commonwealth of Virginia regarding disposition of culturally unidentifiable human remains; letter to commenters regarding draft principles on disposition of culturally unidentifiable human remains; Federal Register notice soliciting nominations for two additional review committee members; review committee meeting protocol; review committee dispute resolution procedures; report to Congress for 1998; review of draft guidelines on discoveries and excavations; determination if Federal agencies can be required to prepare discovery plans; documentation of Federal agency policies regarding hiring of Native American religious leaders as experts; response to Hopi regarding notice by Mesa Verde National Park and Aztec Ruins National Monument; response to James Martin regarding invitation from USET to coordinate future committee meeting; distribution of Paiute-Shoshone Tribe's submission regarding Spirit Cave human remains.

Review committee members also asked for the following information: a summary detailing review committee operational and grant budget information for FY 1999 and FY 2000; a list detailing forbearance requirements for each of the six institutions that were denied inventory extensions in the spring of 1999, as well as regular updates on their progress; an update on the notice publication backlog; regular updates on incoming correspondence; and monthly updates on the progress of action list items. Throughout the meeting, the review committee members expressed concern regarding lack of Federal agency compliance and asked to have an update of Federal agency compliance at the next meeting.

### **Public Comment**

#### Mendocino County Intertribal Repatriation Project

Ms. Pauline Girvin-Montoya, Mendocino County Intertribal Repatriation Project, reviewed the troubled history California Indian tribes have had in consultation efforts with the University of California at Berkeley, specifically concerning repatriation issues. She explained that after testifying at the Santa Fe hearing about the need for civil penalties against UC Berkeley conditions have improved through the hiring of additional staff; however, requests for information and consultation have been denied. UC Berkeley cited internal policies and the fact that they have been granted a forbearance period for completion of their inventory as reasons for this denial. Ms. Girvin-Montoya expressed the coalition's desire to provide information to UC Berkeley necessary for determinations of cultural affiliation of Native American human remains from the state of California. The coalition is requesting that the UC Berkeley inventory be not accepted as final since good faith consultation did not occur, and once again the coalition would ask for an imposition of civil penalties against UC Berkeley for failure to work within NAGPRA. The coalition requested that information be provided explaining the details of the forbearance period and that the university should be required to develop a process for Indian tribes to present information or issues of concern to the university regarding NAGPRA.

Ms. Priscilla Hunter, Coyote Valley Band of Pomo Indians, expressed her understanding of the difficulties within the repatriation process and her hope that the review committee members could help. She explained her joy and pride in the tribal ceremonial objects found in museums that could strengthen their Indian tribe. Ms. Hunter expressed the

hope that there would be a Californian representative on the review committee at some point in the future and invited the review committee members to meet in California. She asked how information could be circulated to all Indian tribes regarding precedent setting decisions made by the review committee members. Mr. O'Shea explained that review committee information is available through the NPS mailing list and the NPS website.

Review Committee Discussion: The review committee members expressed their concern over the experiences different Native groups have had with UC Berkeley, and Mr. Sullivan commented that the situation may comprise a dispute. Mr. Bradley suggested that a letter be sent to UC Berkeley detailing the concerns that UC Berkeley has not followed the process or completed good faith consultation. Mr. O'Shea cautioned against making precipitous decisions without representation from UC Berkeley.

Mr. Steve Banegas, Kumeyaay Cultural Repatriation Committee, added that the coalition was formed to help the process, and coalition members want to sit down as equals and work out this process.

Ms. Linda Fabbri, University of California Berkeley, explained that the university has made great efforts to address all areas of concern presented at the Santa Fe meeting in December 1998. The museum has a new director as of July 1, 1999, additional staff has been hired, and an additional allocation in excess of one million dollars was granted from the chancellor. The university is on track to meet their December 1999 forbearance requirements. Ms. Fabbri explained that the university is more than willing to speak with Ms. Girvin-Montoya's group about any additional information they would be able to provide regarding cultural affiliation determinations.

Review Committee Discussion: In response to questions from Mr. Minthorn, Ms. Fabbri explained that the university exceeded their August forbearance requirements, is on track to meet their December forbearance requirements, and feels that they will meet all requirements by the end of their forbearance period in June 2000. Mr. Bradley expressed his appreciation of the difficulties raised by forbearance periods in general and encouraged UC Berkeley to work with the California groups to avoid this issue becoming a dispute. Mr. Minthorn asked Ms. Fabbri to keep the review committee members apprised of the situation. The review committee members agreed that a letter of concern to UC Berkeley was not necessary at this point and encouraged the groups to meet and work out their differences to try to prevent this issue from coming before the review committee members again.

Mr. Steven Begay, Navajo Nation, explained that the Navajo Nation has made three unsuccessful attempts to address the review committee members regarding the dispute between the Hopi Tribe and Chaco Canyon. Mr. Begay summarized a written statement, which he supplied to the review committee members, wherein he describes in detail Navajo kinship and oral history traditions, as well as naming several clans within the Navajo Nation that trace ancestry to Anasazi people. He expressed the hope that the review committee members would read and consider this statement, even though a recommendation had already been made concerning the dispute. In response to Mr. Sullivan's statement regarding parties to a dispute, Mr. Begay replied that Navajo Nation recognizes this dispute as being between the Hopi Tribe and Chaco Culture NHP. However, Navajo Nation wanted to be able to comment and answer questions related to recognition of Navajo cultural affiliation with Chaco Canyon.

Ms. Clare Farrell, Midwest SOARRING, explained that Midwest SOARRING is a nonprofit organization in the state of Illinois that helps facilitate repatriation and protect Native burial sites in the state and surrounding region, working under resolution from the Winnebago Tribe of Nebraska. Ms. Farrell expressed concern that human remains from other countries were being publicly displayed in the United States, specifically Incan remains from Peru. As this is not covered by NAGPRA and goes against the spirit of NAGPRA and the attitude held by Native people regarding displaying indigenous remains, she asked if anything could be done about this practice. Mr. Sullivan replied that this is really an issue that the government of Peru has to be held accountable for, and Mr. Hart added that perhaps the Smithsonian would have some oversight of the process.

Mr. Dennis Funmaker, Ho-Chunk Nation, reminded the review committee members of his presentation at the Santa Fe review committee meeting in December of 1998 regarding the Thunder Clan war bundle currently in the control of the Field Museum, in Chicago, Illinois. He further described the Field Museum's position that they would

repatriate the bundle to the Ho-Chunk Nation if the Ho-Chunk Nation agreed to return the bundle at such time as it was no longer needed. Mr. Funmaker stated the Ho-Chunk legislature and traditional court both opposed such an agreement. After discussions at the Santa Fe meeting, the Ho-Chunk Nation believed the review committee members would ask the NPS for assistance in this matter by writing a letter to the Field Museum expressing concern and asking for clarification of the situation. Mr. Funmaker asked if this letter had been sent.

Mr. McManamon confirmed that the NPS had been asked to complete this correspondence, which had not been done. Review committee members discussed the situation and expressed concern that the letter had not been sent in the year's time since the Santa Fe meeting. In response to the concerns raised by Mr. Funmaker, the review committee members requested that the NPS send a letter to the Field Museum asking the basis on which the museum continues to assert right of possession, given that the object has been identified as both a sacred object and an object of cultural patrimony under the definitions provided in NAGPRA. A draft of the letter was prepared and approved at the meeting.

Ms. Debra Harry, Northern Paiute Nation and the Indigenous Peoples Council on Biocolonialism (IPCB), stated that the IPCB strongly encourages the review committee members to protect the intent of NAGPRA, which was designed to assist Indian tribes in repatriating ancestral remains. She stated that recent events clearly show the goal of some of the scientific community to secure the freedom to do scientific study on culturally unidentifiable human remains. She explained that genetic analysis is not helpful and should not be considered in cultural affiliation determinations. The results of cranial research show that cranial variation is great in nearly any population across time. DNA analysis cannot determine cultural affiliation because affiliation is a cultural concept, not biological. Practically, DNA analysis can be used to determine that two samples are different, but cannot be used to absolutely say that two samples are the same or to determine if an individual was part of a group.

Ms. Barbara Isaac, Peabody Museum of Archeology and Ethnography, Harvard University, gave an update on the Peabody's progress and plans for inventory completion under their forbearance period. The Peabody received a 25-month period of forbearance with regular deadlines for reporting on required quotas. This forbearance process has meant that the reporting and consultation process had to be simplified and the Peabody was no longer eligible for grants from the NPS, which were previously used to bring tribal representatives to the museum for consultation purposes. Ten additional staff members have been appointed to the repatriation office to handle NAGPRA consultations and inventories and an additional eight staff members were appointed in the collections department to verify basic collections data and do data entry. The October 31<sup>st</sup>, 1999 deadline was met with inventory completion on collections from 20 states. There are five states for which the Peabody has no collections. Ms. Isaac described the geographical approach the Peabody will use to finalize inventory completion for the remaining 18 months of their forbearance period. She explained that the inventory process itself has been simplified and shortened from 18 months to six months, in order to meet forbearance deadlines. She added that the delay in publication of Federal Register notices allows for revision of inventory completion notices if new information becomes available, but this is also a time-consuming process.

Mr. Bradley expressed concern about forbearance periods and the resulting negative effect on consultation. Mr. Sullivan summarized Harvard's inventory as containing 4,872 human remains, including 1,186 classified as culturally unidentifiable, and asked for clarification of the main reasons for that classification. Ms. Patricia Capone explained that most human remains were reported as culturally unidentifiable due to lack of information, with some exceptions from areas where there are cultural discontinuities. In response to a request from Mr. Minthorn, Mr. McManamon stated that the NPS would keep the review committee members apprised of the Peabody's progress. Mr. Bradley asked for clarification of the review committee's role in the forbearance issue. Mr. McManamon explained that while the review committee does not have a specific role in overseeing the forbearance issue, the NPS could keep the review committee members informed of the progress of each of the six institutions under forbearance.

Mr. Keith Kintigh, President of the Society for American Archeology (SAA), commented on two different issues in the discussion of ancient human remains; conclusions scientists draw based on available evidence and legal questions



relevant to the disposition of human remains. The issues are closely intertwined since Native Americans' legal claims may prevent the study necessary to answer scientific questions. Mr. Kintigh explained that SAA agrees with the DOI that Kennewick Man, and other ancient human remains, is Native American, but added that cultural affiliation is still uncertain and cultural affiliation governs the disposition of these human remains. Mr. Kintigh commended the review committee members on their recommendation regarding the Hopi Tribe and Chaco Culture NHP dispute. He stated that the precedents set by that recommendation should help preserve the integrity of the definition of cultural affiliation in the statute and help address the issue of culturally unidentifiable human remains. Mr. Kintigh encouraged the review committee members to treat culturally unidentifiable human remains as separate classes with differing relationships with modern groups and different potential to teach about the past. He suggested the review committee members refine the categorization of human remains that appear in the draft principles in order to move toward outlining the scope of the tribal, scientific, and museum interests with respect to questions of study, disposition, or repatriation. Mr. Kintigh hoped compromise could be reached to allow the preservation of information and repatriation, as the information learned about the past is of interest to scientists, the public and also to Native people.

Mr. Clark Larsen, President of the American Association of Physical Anthropologists (AAPA), expressed appreciation for the review committee members' work in the implementation of NAGPRA. He explained that the AAPA previously presented a letter commenting on the draft principles of agreement and summarized some of the concerns. The regulations should allow for the idea that disposition does not necessarily mean reburial. Culturally unidentifiable human remains with limited or no information do have educational and scientific value in providing an important comparative perspective, as well as the potential for future genetic information, and should not be speedily repatriated. Invasive testing for radiocarbon dates and DNA analysis provides important context for cultural affiliation and should be an option. Regional solutions for disposition of culturally unidentifiable human remains are highly reasonable, but individual sites also have enormous importance and need to be considered.

Mr. Minthorn agreed that compromise should be reached when dealing with Native American ancestral remains, but stressed that culturally unidentifiable human remains are no less significant than culturally affiliated human remains. Studies should not be allowed just because of their classification. He expressed concern that ancestral remains were considered a source of educational value. Mr. Kintigh expressed optimism that compromise could be achieved between traditional interests and scientific interests. Mr. Larsen pointed out the increased levels of communication between scientists and Native Americans in the present compared to 20 years ago and agreed with Mr. Kintigh that all parties need to discuss culturally unidentifiable human remains. Mr. Minthorn stated that NAGPRA was created to come to a compromise between museums, universities, Federal agencies and Indian tribes; however, some of the compromise has been lost, particularly in some of the issues coming before the review committee members. He stated the law should be changed to give more voice to Indian tribes in dealing with NAGPRA and to restore that level of compromise. Mr. Kintigh expressed concern about the lack of Federal agency compliance with NAGPRA and expressed appreciation for the review committee members' efforts to address that problem.

Mr. Sebastian (Bronco) LeBeau, Cheyenne River Sioux Tribe, explained that he submitted comments on the draft principles of agreement regarding culturally unidentifiable human remains, but missed the deadline due to the NPS delay in distribution. Mr. LeBeau emphasized that the ancestors held by museums and agencies need to be returned to the Indian people and explained that the term "culturally unidentifiable" does not exist for Native Americans. Mr. LeBeau stated that he has had experience with museums wanting to provide input on the disposition of Native American human remains, when that should be solely a tribal decision. The intent of the Act is to rebury Native American ancestors. He explained that the value in Native American human remains is in healing, not what can be learned from them. Native Americans document through oral tradition, not the written word and have a different definition of kinship. Kinship is a relationship recognized between Native Americans, even if the law does not recognize it. Cultural affiliation does not mean biological affiliation and cannot be determined by physical measurements, skin color, or language. Native American ancestors need to go home, and the review committee members can help by making all institutions, Federal agencies and museums fulfill the requirements of the statute.

Mr. James T. Martin, United South and Eastern Tribes (USET), stated he was Executive Director of USET, an intertribal organization of 23 Federally recognized Indian tribes from Maine to Florida and west to Texas. He read USET Resolution 2015 regarding the draft principles of agreement which states that all rules, regulations, and conditions for the repatriation of so-called culturally unidentifiable human remains shall be set forth only by a government-to-government process on a regional basis with Federally recognized Indian tribes. Mr. Martin commented on a number of topics discussed previously at the meeting. He expressed concern about the one-year delay in action regarding the Ho-Chunk war bundle described by Mr. Funmaker. He felt that Navajo Nation was affected by the Chaco Culture NHP cultural affiliation decision and should have been allowed to provide information. He expressed a healthy disagreement with the NPS memo stating there does not appear to be a conflict of interest and expressed the need for a review process. Mr. Martin expressed appreciation and support for the work of the review committee members, and offered on behalf of USET to support any request by the review committee members for additional funding. He suggested that the review committee have representation from the southern and eastern part of the United States, and on behalf of USET offered to help coordinate the next review committee meeting.

Ms. Jean McCoard, Native American Alliance of Ohio (NAAO), expressed concern regarding the legal loophole in NAGPRA as it applies to Ohio that permits retention of culturally unidentifiable Native American ancestors in storage facilities because there are no Federally recognized Indian tribes in Ohio. She explained that the majority of inventoried human remains in Ohio are culturally unidentifiable and the majority of human remains are from mounds and burial sites in Ohio. She cited an example of this at the Ohio Historical Society, which holds the human remains of more than 5,000 Native American individuals, the vast majority being considered culturally unidentifiable. In January 1998, the NAAO presented a proposal to the review committee members to address the repatriation issue in Ohio. The proposal calls for the establishment of a memorial park at the Fernald Nuclear Enrichment Plant in Hamilton, Ohio, on the buffer zone between the plant and the community, which would be given to the Indian tribes. The creation of this reburial memorial encourages tribal participation, is economically feasible, fulfills the spirit and letter of NAGPRA, and provides for the expeditious and permanent protection of Native American ancestors. Ms. McCoard explained that the decision now rests with the Department of Energy. She expressed hope that other states with similar situations would consider this solution as a model for culturally unidentifiable human remains. In response to concerns expressed by Mr. Minthorn and Mr. Sullivan, Mr. McManamon explained that the Ohio Historical Society is one of the six institutions currently under a period of forbearance for inventory completion, with a scheduled inventory completion of May 2001.

Mr. Brett Shelton, Oglala Lakota Nation and Indigenous Peoples Council on Biocolonialism, expressed his appreciation for the review committee members' efforts and the difficulty of their task in dealing with NAGPRA implementation. He described the purpose of the Act was not to balance museum/scientific interests and tribal interests, but to favor Native American human rights. The expanded evidence categories in the Act with explicit provisions for oral tradition, historic, and folkloric tribal evidence demonstrate Congress's intention to listen to tribal people. Congress set a standard that Indian tribes only need to meet a preponderance of the evidence, greater than 50 percent, in presenting their evidence for cultural affiliation. Mr. Shelton stated that he has seen a lot of unnecessary delay in the process of cultural affiliation determinations. Delays caused by a scientific desire to gather DNA evidence or complete genetic testing are not useful because relationships cannot be established with this type of testing, as described by Ms. Harry. The function of the review committee should be to help expedite the process of cultural affiliation determinations. One solution might be the use of geographic information systems (GIS) to combine site data for culturally unidentifiable human remains from museums and institutions with tribal information, such as Indian Claims Commission maps, aboriginal territories and treaty territories, to locate Indian tribes with potential cultural affiliation. Mr. Shelton suggested implementation of GIS on a Federal level to benefit all Indian tribes.

Ms. Rebecca Tsosie, School of Law, Arizona State University, acknowledged the review committee members' hard work in preparing the draft principles of agreement regarding culturally unidentifiable human remains and added that decisions regarding the issue of culturally unidentifiable human remains will have an impact on the entire law. She explained that NAGPRA stems from the US Government's plenary power and its trust responsibility to Indian tribes. The US Government has a duty to protect the interests of Native people, which stems from the treaties and history

between the US Government and Indian people. Developing a process for disposition of culturally unidentifiable human remains depends upon the definition of the category of human remains considered culturally unidentifiable and the articulation of principles to guide the process. The category of culturally unidentifiable human remains is dependent on the idea of cultural affiliation, a shared group identity that is reasonably traced through time between a present group and an identifiable past group. Scientists today argue for a narrow definition of cultural affiliation requiring the present-day group to be Federally recognized and to prove a biological connection to a defined, biologically recognized earlier group. This is not a valid reading of the statute because the statute requires that human remains be expeditiously returned to the requesting Indian tribe when cultural affiliation has been shown by a preponderance of evidence. A distinction can then be made between human remains that lack any information to tie them to some contemporary claimant group from those that do possess that information. The standard of preponderance of the evidence simply means more likely than not and the burden rests with the Indian tribe. The Indian tribe can prove its claim according to its standards, for example, by evaluating its traditions, history, folklore, language, kinship, etcetera. Native American people have different concepts of kinship than Anglo-American people, which might include relationships to all Native American people within a certain region, such as the Great Basin.

Following these principles, the category of culturally unidentifiable human remains is minuscule. First, human remains culturally affiliated to a non-Federally recognized group do not fall within the definition. The only problem in this category is lack of standing to make a claim, which can ultimately be achieved in connection with Federally recognized Indian tribes. Second, human remains that have any information regarding origin, whether geographical location or associated objects, that information should be used to establish which present-day groups possess the closest relationship. The scientific argument that passage of time prevents a sufficiently close connection between an ancient ancestor and a contemporary group is dependent upon definitions from cultures that are different from Native cultures and goes against the intent of NAGPRA to respect the cultural differences of Native people. The fact that an earlier group did not survive into the present should not prevent contemporary Indian tribes who stand in a relationship with those Indian tribes that were exterminated from repatriation. Third, human remains that are identified as Native American but have no other information to assist in defining a contemporary claimant group may be treated as culturally unidentifiable, in the sense that many Native groups believe all Native people of this continent are their ancestors.

Ms. Tsosie disagreed with the argument presented by Mr. Larsen that Native American human remains have information useful in teaching students about human variability. She believes the important lesson to be learned is how people differ culturally. NAGPRA needs to be read within a broader national and international context of policy relevant to the rights of indigenous peoples. Ms. Tsosie explained the policy of some countries is any human remains that predate European discovery are considered Native and should be repatriated to Native people. To deal with this issue fairly, it is important to recognize that the legal right to control disposition stems from the moral right of Native people to control their ancestral remains. The government-to-government relationship between Indian tribes and the US Government must be affirmed, as Indian tribes are separate governments who are claiming the repatriation of their ancestors as a political right. The idea of regional solutions to this issue is sound as long as sufficient consultation is completed. In response to requests by review committee members, Ms. Tsosie agreed to furnish legal citations of cases pertaining to the canons of construction of Indian law, as well as a copy of her presentation.

Ms. Pemina Yellow Bird, Three Affiliated Tribes and the North Dakota Intertribal Reinterment Committee, thanked the review committee members for the opportunity to submit comments on the draft principles of agreement of culturally unidentifiable human remains. She stressed the importance of the intent of NAGPRA, passed to protect the interests of Indian tribes as opposed to the interests of science and museums, and added that the draft principles need to emphasize this point. Ms. Yellow Bird addressed topics raised in the draft principles. In section a.2.c of the draft principles, the category of ancestral remains needs to be defined by the Indian tribes. One suggestion would be defining unclaimed Native American human remains as ancestors of those Indian tribes who have declared in writing that they have no ceremony for reburial or have spiritual beliefs which prohibit claiming Native American human remains. Regarding section 3.a of the draft principles, Ms. Yellow Bird stated that the Act does not preclude the

review committee members from addressing the issue of standing of funerary objects associated with culturally unidentifiable human remains. She explained her Indian tribe's position that burial property taken along with the Native American human remains needs to be returned.

Ms. Yellow Bird agreed that section a.5 of the draft principles needs to be removed. The only time the statute mentions scientific study is in section 7.5(c)(b) where it addresses situations where items are indispensable for completion of a specific scientific study wherein the outcome is of major benefit to the US. Section 5.2 states that documentation does not authorize the initiation of new scientific studies of Native American human remains and associated funerary objects. Ms. Yellow Bird explained that she was present and gave testimony for the passage of NAGPRA, and her impression was that Congress supported tribal opposition of scientific study. The statute does not require that scientific educational interests be balanced with tribal interests. The only scientific study that should be allowed is that which an individual Indian tribe has approved.

Ms. Yellow Bird expressed concern over the lack of tribal consultation during the process of cultural affiliation determinations by Federal agencies and museums and the validity of the good faith evaluations made of culturally unidentifiable human remains. She felt that section b.3 regarding categories of culturally unidentifiable human remains should be removed from the draft principles. Human remains defined as being culturally unidentifiable because they are associated with a Federally recognized Indian tribe should be considered culturally affiliated. From a Native American viewpoint, no tribal groups are extinct, as there is a universal tribal belief that all Native Americans are related. Native American human remains with insufficient evidence to make a cultural affiliation determination can be claimed by individual Indian tribes or joint intertribal coalitions in order to reach the goal of reburial of all Native American human remains. She described the position of the North Dakota Intertribal Reinterment Committee as claiming all Native American human remains and attendant burial properties taken from their collective aboriginal homelands, and suggested several changes to more clearly express their position.

### **Closing Comments**

Mr. Sullivan thanked the committee members, the NPS staff, and the audience for their patience and hard work. On behalf of the NPS and the DOI, Mr. McManamon thanked the review committee members and the audience for their time and attention.

Mr. Armand Minthorn gave the closing invocation. The meeting was adjourned at 1:00 p.m. on Saturday, November 20<sup>th</sup>, 1999.

Approved:

/S/ Martin Sullivan  
Mr. Martin Sullivan, Chair  
Native American Graves Protection  
and Repatriation Committee

April 04, 2000  
Date